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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,651	01/08/2007	Norbert Schneider	LEITH2.001APC	6186
20995	7590	03/19/2009	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			ESTREMSKY, GARY WAYNE	
2040 MAIN STREET			ART UNIT	PAPER NUMBER
FOURTEENTH FLOOR			3677	
IRVINE, CA 92614				

  

NOTIFICATION DATE	DELIVERY MODE
03/19/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/549,651	SCHNEIDER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gary Estremsky	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 25 November 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: See Continuation Sheet.

Continuation of Attachment(s) 6). Other: English translation of foreign document relied on in grounds of rejection.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Germany Pat. No. 704518.

3. Fig 1 for example of Germany '518 teaches Applicant's claim limitations including : a "first element" – g, a "second element" – f, a "bracing bolt" – a, a "sleeve" – d, a "sleeve tensioning device" – including h which is threaded onto sleeve d (noting threads e) wherein one of ordinary skill in the art at the time of the invention would recognize that a force that separates f and g will press g against h whereby compression in d against f will inherently be reduced and will inherently break the bolt if further increased.

4. Further regarding claim 2; the claim is for a product, defined by its structure, not a method of use and the limitation is interpreted as being directed to an intended use of the claimed invention. Otherwise, it should be noted that single claim for product and its process of use is indefinite and potentially non-statutory. Regardless, one of ordinary skill in the art would recognize that loading to yield point is within intended use of the disclosed device without modification.

5. Claims 1, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,041,913 to Liska.

6. Liska '913 teaches Applicant's claim limitations including : : a "first element" – 20, a "second element" – including 22,86, a "bracing bolt" – 50, a "sleeve" – 10, "sleeve tensioning device" - 26 wherein one of ordinary skill in the art would recognize that prior art has all structure set forth in the claim and is inherently capable of broad functionally recited capability. With part 10 fully seated in 86 and 56 threadedly engaging 60, sleeve 10 can be compressed by tightening 50. In such position, a separating force between 20 and 22 will release the compression between 20,22 and consequential breaking of the bolt.

7. As regards claim 5, reference teaches all claimed structure including "screw thread" at 56 and "internal thread" at 60.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,041,913 to Liska.

10. Although Liska '913 does not disclose strain of bolt to yielding point, it would have been obvious to one of ordinary skill in the art in order to achieve maximum

operating range of expected function wherein such modification would not otherwise affect structure of the arrangement.

11. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Germany Pat. No. 704,518.

12. As regards claim 2, one of ordinary skill in the art would recognize that loading to yield point is within intended use of the disclosed device whereby such loading would have been obvious if not inherent to the arrangement.

13. As regards claims 3 and 4, it would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to provide the sleeve to be more elastic than the sleeve and alternatively, to provide the sleeve to be more elastic than the first element in order to brace first elements having material property that is more or less elastic than that of the sleeve inasmuch as one of ordinary skill in the art would recognize that device of the prior art can function as intended with first braced elements of more or less elasticity than the sleeve.

### ***Response to Arguments***

Applicant's arguments filed 11/25/08 have been fully considered but they are not entirely persuasive. Applicant's arguments are not consistent with the structure, arrangement and inherent capability of the prior art but seem more related to intended use of the presently-claimed product. For example, it's noted that present invention does not include a bracing bolt that *is* broken, but instead claims a bolt that is

functionally recited as being *capable of* breaking during some intended method of use. It is examiner's position that prior art discloses a bolt as claimed that is also inherently capable of being broken and that present claim does not clearly define any particular structure not taught by the prior art that can be relied on to patentably distinguish from the well known prior art structure. It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

### ***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 571 272-7055. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on 571 272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gary Estremsky  
Primary Examiner  
Art Unit 3677

/Gary Estremsky/  
Primary Examiner, Art Unit 3677